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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: DEC 22 2010

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Mai Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a member church of the International Church of the Foursquare Gospel. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as an assistant pastor. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits a brief from counsel and various documents relating to the beneficiary's past experience.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
> >
> > (II) before September 30, 2012, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
> >
> > (III) before September 30, 2012, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States,

continuously for at least the two-year period immediately preceding the filing of the petition. The USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads:

> *Evidence relating to the alien's prior employment.* Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:
>
> (i) Received salaried compensation, the petitioner must submit IRS [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.
>
> (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.
>
> (iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.
>
> If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

The petitioner filed the Form I-360 petition on October 6, 2008. The petitioner claimed that the beneficiary last entered the United States since December 6, 1999. Other materials in the record indicate that the beneficiary previously entered the United States on February 20, 1999 as a B-1 nonimmigrant visitor for business for the purpose of "attending church related meetings." We note that the record contains a letter dated "1/2/99" from a church in Surulere, Nigeria, congratulating the beneficiary on her "new assignment abroad." The tone of the letter suggests awareness of the beneficiary's permanent departure from the church in Nigeria, rather than an expected short trip for "meetings" in accordance with the terms of B-1 nonimmigrant status. Section 101(a)(15)(B) of the Act limits B-1 nonimmigrant status to "an alien . . . having a residence in a foreign country which [s]he has no intention of abandoning and who is visiting the United States temporarily for business."

The petition included Form G-325A, Biographic Information. On that form, asked to list her employment over the past five years (September 2003 to September 2008), the beneficiary wrote "None." The beneficiary indicated that her employment overseas, as a senior pastor in Nigeria, had ended in February 1999 (the month she entered the United States with a B-1 nonimmigrant visa).

The petition also included a job offer letter from [redacted] senior pastor of the petitioning church, thanking the beneficiary for her "years of voluntary service" and stating that her employment would begin "as soon as your Immigration Status in the United States allows you to obtain employment." This wording acknowledged that the beneficiary did not yet have such status. In a separate letter, Pasto[redacted] stated that the church "cannot employ her without her green card status."

The petitioner also submitted a copy of a [redacted] certificate from the City Council of Detroit, Michigan, acknowledging the beneficiary's efforts with the [redacted]

On January 27, 2009, the director instructed the petitioner to submit evidence required under newly revised regulations, including documentation of the beneficiary's prior compensation and evidence to show how the beneficiary has supported herself during the two-year qualifying period. In response, Pastor [redacted] stated that the beneficiary "lives with a woman who charges her no rent or utility expenses; She has no car payment; She receives a retirement income from her work in Nigeria and receives financial assistance from numerous friends and family members."

[redacted] stated:

> I am a registered nurse. I am currently employed at [redacted] in Royal Oak, Michigan. In the year of 2000 I became acquainted with [the beneficiary] and was impressed with her compassion and involvement in the church. . . .
>
> In February 2002 I was very happy to invite her to live in my home. I am her main provider, however, she does draw from her pension in Lagos, Nigeria, from time to time; and is also occasionally receives [*sic*] funds from family members as well as friends.

Various witnesses claimed to have provided financial support to the beneficiary. A series of photocopied checks show payments to the beneficiary from one [redacted] Rhode Island, mostly for a few hundred dollars or less and mostly between 2004 and 2006. The most recent check, for $200.00, is dated January 25, 2008. A copy of a bank statement showed that the beneficiary's bank account held a balance of $458.33 as of June 6, 2008.

The record contains no identifiable evidence of the beneficiary's claimed pension. The record contains Nigerian bank documents from 2003 and 2004 in the name of [redacted] The record contains nothing from [redacted] or anyone else to explain the relevance of these documents. We note similarities between [redacted] name and that of the beneficiary, but the record indicates that the beneficiary has never married and therefore cannot, herself, be [redacted]

The petitioner also submitted an updated Form G-325A, on which the beneficiary listed her employment over the last five years (March 2004 to March 2009). The beneficiary indicated that she had worked as a volunteer chaplain at various hospitals, and as a volunteer tutor for [redacted]

[redacted]. Under "last occupation abroad," the beneficiary indicated that she had served as a senior pastor in Nigeria until December 1999 (whereas the earlier Form G-325A had shown February 1999). Various certificates attested to the beneficiary's volunteer work.

The director denied the petition on March 26, 2009, because the beneficiary did not perform compensated work during the two-year qualifying period. The director stated:

> [T]he beneficiary is a [redacted] for the petitioning organization. This means that the beneficiary is not being paid for her services.
>
> Since the beneficiary has been devoting her time on a volunteer basis and not being compensated for her services, the beneficiary has not demonstrated that she has two years paid experience as a minister.

On appeal, counsel states: "chaplaincy is not the main duty but only one of the many ministerial duties that the beneficiary performs. Beneficiary is a non-salaried volunteer minister of the church supported by self, friends and family." The petitioner submits various materials, including copies of previously submitted documents, to support this claim. The director, however, did not deny the petition because the beneficiary served as a chaplain, but because she has worked without compensation – a finding that counsel does not dispute on appeal.

The regulation at 8 C.F.R. § 204.5(m)(11) and its subclauses require that the beneficiary must have received salaried or unsalaried compensation unless she "provided for . . . her own support." The regulation at 8 C.F.R. § 204.5(m)(11)(iii), which the director quoted in full in the denial notice, includes specific requirements for documenting self-support. The petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS. In this instance, the petitioner has submitted one bank statement showing a balance below $500, a letter from a person who allows the beneficiary to live at her house, and witness letters containing negligible details. These materials do not meet the regulatory standard of the required evidence.

The regulation at 8 C.F.R. § 214.2(r)(11)(ii) describes the nature of qualifying self-support:

> (ii) *Self support.* (A) If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.
>
> (B) An established program for temporary, uncompensated work is defined to be a missionary program in which:

(1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;

(2) Missionary workers are traditionally uncompensated;

(3) The organization provides formal training for missionaries; and

(4) Participation in such missionary work is an established element of religious development in that denomination.

(C) The petitioner must submit evidence demonstrating:

(1) That the organization has an established program for temporary, uncompensated missionary work;

(2) That the denomination maintains missionary programs both in the United States and abroad;

(3) The religious worker's acceptance into the missionary program;

(4) The religious duties and responsibilities associated with the traditionally uncompensated missionary work; and

(5) Copies of the alien's bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS.

The petitioner has not shown that the beneficiary participated in an established program for temporary, uncompensated missionary work.

Also, in the denial notice, the director quoted, in full, the regulations at 8 C.F.R. § 204.5(m)(4), which requires the beneficiary to have performed the work "in lawful immigration status in the United States," and 8 C.F.R. § 204.5(m)(11), which requires that the beneficiary's past experience "if acquired in the United States, must have been authorized under United States immigration law." The petitioner has submitted no evidence that any of the beneficiary's 2006-2008 work meets these requirements.

We have already noted that, on Form I-360, the petitioner claimed that the beneficiary last entered the United States on December 6, 1999. In fact, the record shows that the beneficiary entered on October 7, 1999, as a B-1 nonimmigrant visitor for business, and that her admission was valid until December 6, 1999. (The petitioner may have misinterpreted the expiration date as an entry date.) The record contains no evidence that the beneficiary ever received any extension of this status, or changed to another lawful nonimmigrant status. Instructed on Form I-360 to specify the beneficiary's "Current

Nonimmigrant Status," the petitioner wrote "PENDING," which is not a nonimmigrant status. The term "pending" implies the prior filing of an application or petition on the beneficiary's behalf, seeking a particular nonimmigrant classification. The petitioner, however, did not specify the classification supposedly sought, and the record contains no documentation of any such application or petition. We must conclude that the term "pending" refers to the Form I-360 immigrant petition itself. The filing of that petition, however, does not accord the beneficiary lawful nonimmigrant status, nor does it retroactively convey such status for any earlier period of time.

We conclude that the beneficiary had been out of lawful nonimmigrant status for nearly nine years before the October 2008 filing date. If the beneficiary had no lawful nonimmigrant status at all during the two-year qualifying period, then she had no authorization even to be in the United States at all, much less to work for the petitioner or for anyone else in the United States. The self-support clause at 8 C.F.R. § 204.5(m)(11)(iii) does not permit an alien unlawfully present in the United States, or lacking employment authorization, to accumulate qualifying experience by working as a volunteer. Allowing periods of unauthorized, unreported employment to qualify an alien toward permanent immigration undermines the integrity of the United States immigration system. 72 Fed. Reg. 20442, 20447-48 (April 25, 2007). Counsel does not address this disqualifying issue at all, focusing instead on the irrelevant question of whether the beneficiary was primarily a hospital chaplain or a church minister.

We agree with the director's finding that the beneficiary did not perform any qualifying work, as the regulations define such work, during the two years immediately preceding the petition's filing date.

Review of the record reveals an additional issue of concern. The AAO may identify additional grounds for denial beyond what the Service Center identified in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The USCIS regulation at 8 C.F.R. § 204.5(m)(10) reads:

> *Evidence relating to compensation.* Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

The petitioner has specified that the beneficiary would receive a salary of $20,000 per year. The petitioner must, therefore, show how it will provide this compensation. The petitioner submitted a profit and loss statement for calendar year 2008, indicating that the petitioner's expenses exceeded

its income by $2,638.22. Given that the petitioner was already spending more than it was taking in when the beneficiary worked for free, it is not clear how the petitioner could afford the added expense of the beneficiary's $20,000 salary. That salary would exhaust the petitioner's $34,116.40 cash reserves in less than two years.

The petitioner's 2009 budget anticipated a reduction in income but an even greater reduction in expenses, leaving a surplus of $8,780. The petitioner claimed to have spent $40,203.20 on non-daycare salaries in 2008, and to have budgeted $44,000.00 for those salaries in 2009. These figures do not suggest that the petitioner has planned for the additional $20,000 that the petitioner would spend by adding the beneficiary to the payroll. Therefore, we cannot find that the petitioner has provided sufficient evidence to show how it intends to compensate the beneficiary.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.